

EXHIBIT 3

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VIRGINIA
Alexandria Division

- - - - - x
TRIDENT ENTERPRISES, LTD, :
 :
 Plaintiffs, :
 :
 v. : Case No.
 : 1:09-cv-1335
 :
 AIRTRONIC USA, INC., :
 :
 Defendant. :
 - - - - - x

Deposition of LEO FISHER
Washington, D.C.
Friday, August 27, 2010
2:24 p.m.

* * * *

Reported by: Okeemah S. Henderson, LSR

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1 Q. What was the result of Rule 11 motion?

2 A. It was denied.

3 Q. Had you ever been deposed before then?

4 A. I don't think so. I think that's the
5 only deposition.

6 Q. Have you ever been an expert before in
7 a case?

8 A. Yes. Well, I have been engaged as an
9 expert before but I have never testified.

10 Q. And why were you engaged as an expert?

11 A. On attorneys fees.

12 Q. Where was that?

13 A. I think I have been engaged twice and
14 it would have been cases in Virginia but I don't
15 remember if they were Virginia state court causes
16 or eastern district.

17 Q. Do you recall the dates that you were
18 engaged?

19 A. I think it's at least five years ago.

20 Q. When you say attorneys fees, what was
21 the context of your engagement?

22 A. A party made an application for

1 out of real estate or, you know, your regular-type
2 of contract breaches or business torts.

3 I do some trademark work and I do a fair
4 amount of counseling businesses. You know, almost
5 like a outside general counsel. I have set up
6 businesses, help them organize their entities,
7 advise them on issues that would come up in the
8 normal course of operations, that sort of thing.

9 Q. What percentage of your practice
10 involves litigation?

11 A. It varies over the 30 years. You
12 know, I would say in the last few years, maybe
13 half. I don't know somewhere.

14 Q. And what about employment law, what
15 percentage of your practice?

16 A. I'm going to say like a quarter.

17 Q. What percentage of your practice
18 involves trademark law?

19 A. Small percentage, I mean, less than
20 5 percent I would think.

21 Q. What percentage involves counseling
22 business?

1 A. I'm going to say 20 percent of my
2 time, 25 percent of my time.

3 Q. When you say counseling businesses,
4 are we talking about small businesses,
5 medium-sized businesses or large businesses?

6 A. Well, there's a variety and I guess it
7 depends upon compared to what standard. At one
8 end there's some fairly large like real estate
9 development-type companies privately held that I
10 would do work with. I mean, at the other end, you
11 know, I have clients over the years it's their
12 first business, they're looking to set up
13 something and do something, they want to talk
14 about what kind of entity they should have and
15 what kind of issues they should be thinking about.
16 Start up.

17 So it's the very -- it's the very small to
18 what I would think of is small to mid-size
19 business. In other words, they're not
20 multi-billion dollar businesses.

21 Q. What percent of your practice involves
22 counseling businesses the size of Trident?

1 A. No.

2 Q. What is the hourly rate you are
3 charging in this case?

4 A. \$400.00 an hour.

5 Q. What were you asked to provide an
6 opinion on?

7 A. Essentially to compare the practices
8 of Trident with respect to various corporate
9 actions to what I have seen and believed to be the
10 case with other small closely-held corporations.

11 Q. And were these corporations located in
12 Virginia?

13 A. Most would have been.

14 Q. Have you ever been engaged to
15 represent a company that was incorporated in North
16 Carolina?

17 A. Not that I recall.

18 Q. What did you review before you came to
19 your opinion?

20 A. The things that were listed in my
21 expert report.

22 Q. Would it help you if I showed you your

1 index there were attached to certain pleadings,
2 portions of depositions. So I looked at those.

3 Q. So you only looked at portions of
4 depositions?

5 A. Well, let me finish my -- so when I
6 did this report, this was what it was limited to.
7 In the last few days, Mr. Briggs sent me Mr.
8 Hillenburg's, I think it was the second deposition
9 transcript. So I have looked at that and that's
10 the, other than the portions of depositions
11 transcripts what were attached to the pleadings
12 that were listed here on the index, that's the
13 only deposition I have seen.

14 Q. So you've only looked at one complete
15 deposition and then excerpts of others; is that
16 correct?

17 A. Yes.

18 Q. And the excerpts are all depositions
19 of Trident officers?

20 A. They were whatever were attached to
21 those pleadings.

22 Q. Did you look at any depositions of

1 Airtronic?

2 A. I can't remember if there was anything
3 attached. Only if they were attached to the
4 pleadings.

5 Q. Do you know who the president of
6 Airtronic is?

7 A. Is it a Mr. Walter?

8 Q. Right. And did you see his
9 deposition?

10 A. I don't recall that.

11 Q. Do you know whether he was deposed in
12 this case?

13 A. I don't remember that.

14 Q. Did you meet with any of the officers
15 of Trident?

16 A. No, never met them, never talked with
17 them.

18 Q. And you did not think that would be
19 helpful in terms of coming to your opinion to talk
20 to the officers of Trident or meet with them?

21 A. You know, I thought what I had in
22 front of me based on this record, I was told this

1 Q. Did that include that Hillenburg
2 purchased the corporate minute book and that the
3 pages attached to his declaration are the pages of
4 that minute book that he filled out and that the
5 minutes and stock certificates were compared
6 contemporaneously with the events reported?

7 A. I think you're reading from Mr.
8 Briggs' letter which says, you should assume that
9 Mr. Hillenburg purchased a corporate minute book
10 and the pages that are attached to his declaration
11 are the pages out of the minute book that he has
12 filled out and you should assume the minutes and
13 stock certificates and the documents that you have
14 were compared contemporaneously with the events
15 reported therein.

16 Q. You have no personal knowledge that
17 those minutes were prepared contemporaneously, do
18 you?

19 A. No.

20 Q. In fact you never spoke to Mr.
21 Hillenburg about that; is that correct?

22 A. No.

1 Q. Nor any officer about that?

2 A. That's correct.

3 Q. And those minutes -- well, excuse me,
4 did you review the original minute book? In other
5 words, did you see only copies of minutes or did
6 you see the originals?

7 A. I think what I have are copies.

8 Q. Did you try to determine whether it
9 was all the same ink that the minutes were written
10 in or it was separate ink?

11 A. No, I didn't.

12 Q. Was one of the things you were asked
13 to assume were that all the funds in the account
14 were used for corporate purposes?

15 A. Let me check. I think that's in Mr.
16 Briggs' letter but let me check that. Yes, his
17 letter goes on to say, "In connection therewith
18 you should assume that all funds received by
19 Trident were deposited in the corporate bank
20 account and all funds in that account were used
21 for corporate purposes and not personal purposes."

22 Q. You indicated previously you reviewed

1 MR. BRIGGS: Objection. Go ahead and
2 respond if you can without revealing confidential
3 communications.

4 A. I have had clients that are all over
5 the map in terms of what they have done on
6 including tax returns but the range of issues that
7 are addressed in this.

8 BY MR. JACOBVITZ:

9 Q. And you don't see anything wrong with
10 not filing tax returns for five years?

11 A. I didn't say that.

12 Q. Do you think it's improper?

13 A. I think it's going to cause them -- if
14 it's a federal return, I think it's going to give
15 them issues with the IRS.

16 Q. In fact it's illegal to not file tax
17 returns for five years; isn't that correct?

18 A. I'm not a criminal lawyer but I think
19 that's true.

20 Q. And based on your experience it's
21 illegal in the state law to not file tax returns;
22 isn't that correct?

1 A. I think that's partially true but I'm
2 not a criminal lawyer.

3 Q. But yet your opinion is they're
4 consistent with what other small businesses do,
5 they being Trident, by not filing tax returns?

6 A. It happens and they file the returns
7 late and sometimes they don't file until somebody
8 points out an issue, then they go back and they
9 back file or they amend.

10 Q. But you would never advise your
11 clients to not file tax returns for five years;
12 isn't that correct?

13 A. I would not advise them to do that.

14 Q. And you are aware of whether in fact
15 Trident faced dissolution in the state of North
16 Carolina?

17 MR. BRIGGS: Objection. Asked and
18 answered.

19 A. Well, as I said there's a document in
20 the list that I have given you attached to my
21 report where the Secretary of State sent a notice
22 that as I recall it said that they had not filed

1 their annual reports for five years and they would
2 be subject to administrative dissolution if they
3 did not now file them which they then did.

4 BY MR. JACOBVITZ:

5 Q. And you would never advise your
6 clients not to file those reports for five years;
7 isn't that correct?

8 A. That's correct.

9 Q. Did you research the North Carolina
10 law to determine whether not filing those returns
11 in North Carolina was improper or illegal?

12 A. The only research that I did was
13 reading the document that the Secretary of State
14 said and I read it and what it said on its face.

15 Q. And you've never researched North
16 Carolina related to this case?

17 A. No.

18 Q. Do you know where the company is
19 incorporated?

20 A. North Carolina.

21 Q. And you're giving opinions about the
22 behavior of Trident, a North Carolina corporation

1 BY MR. JACOBVITZ:

2 Q. You never spoke to Mr. Fauci to
3 determine whether in fact he was informed of any
4 meetings that the corporation held, did you?

5 A. No.

6 Q. And you indicate in your expert report
7 on page 6 that the fact that Trident did not file
8 its tax returns on a timely basis may raise tax
9 compliance issues between it and the IRS and North
10 Carolina tax authorities. What tax compliance
11 issues are you referring to?

12 A. When they didn't file their tax
13 returns in the time that they were due for the
14 years involved here.

15 Q. You're rendering an opinion here, what
16 tax compliance issues are you referring to?

17 A. Filing your tax returns on time.

18 Q. What are the consequences if you don't
19 file your tax returns on time?

20 A. I don't know the specific tax
21 consequences but at a minimum, you need to file
22 them on time and I don't know if North Carolina

1 has followed up since the or the federal
2 authorities have followed up since they did file
3 them.

4 Q. And you don't know that because you
5 haven't spoken to any of the officers of Trident,
6 have you?

7 A. No, I haven't spoken to them.

8 MR. JACOBOWITZ: Why don't we take a
9 five-minute break.

10 (A break was taken at 3:16 p.m.)

11 (Deposition resumed at 3:23 p.m.)

12 BY MR. JACOBOWITZ:

13 Q. In your experience, what factors do
14 courts look at in analyzing whether the corporate
15 veil should be pierced?

16 MR. BRIGGS: Objection. No foundation.
17 Go ahead and respond if you can.

18 A. Well --

19 Q. Well, you know what -- strike that.
20 I'll ask a foundation question. Do you have any
21 experience with courts in determining how they
22 analyze whether the corporate veil should be

1 pierced?

2 A. Yes.

3 Q. And what factors do courts look at?

4 A. Well, they look at several factors
5 assuming we're talking about an entity that has in
6 fact been incorporated. They're looking at
7 various corporate formalities of different types.
8 They're looking at whether they've separated the
9 business monies from any personal monies of the
10 owners or the officers. They're looking at
11 questions relating to capitalization.

12 These factors have different weight and
13 different circumstances and whether the owners
14 have in some way tried to use the corporation as a
15 way of perpetrating a fraud.

16 Q. Did you speak to any of the officers
17 about the capitalization of the company?

18 A. The answer is no.

19 Q. Do you know whether the address that
20 the company uses in Virginia, excuse me, the PO
21 Box is a personal account or corporate account?

22 A. Well, according to the records that I

1 saw in the last few days, I think I mentioned to
2 you the interrogatory answers and Mr. Hillenburg's
3 transcript, my understanding is that that's his,
4 Mr. Hillenburg's PO Box.

5 Q. His personal account?

6 A. That's what I understood from the
7 interrogatories of the deposition.

8 Q. And that's where the mail of the
9 company goes to?

10 A. That's what I saw there. Yes.

11 Q. And that's located in Virginia?

12 A. I think Arlington, Virginia.

13 Q. You have had no expertise or
14 background in the registration or licensing of
15 firearms, do you?

16 A. No.

17 Q. In your opinion you state that "The
18 corporate actions of Trident are generally
19 consistent with the actions of similarly-situated
20 small businesses organizes closely-held
21 corporations with regard to corporate formalities,
22 capitalization, bank accounts, corporate filings

Page 61

1 should assume that Mr. Walter was fully aware of
2 the closely-held nature of Trident at all relevant
3 times and knew it was a small corporation owned by
4 Messrs. Hillenburg, Fauci and Mendenhall. I
5 really -- that was not important to what I was
6 looking at.

7 I was not asked to render a legal opinion.
8 I thought that had to do more with the legal
9 opinion, so that particular fact that Mr. Walter
10 knew wasn't particularly important to me in terms
11 of comparing this corporation, other corporations
12 so I didn't particularly rely on that. I think
13 those are all the facts that I was asked to
14 assume.

15 BY MR. JACOBOWITZ:

16 Q. And as part of your evaluation, did
17 you review Trident's corporate book?

18 A. Well, I reviewed the copies that were
19 attached as I said here.

20 Q. Were you provided with the original
21 corporate book or a copy?

22 MR. BRIGGS: Objection. Asked and

1 A. It was based upon primarily the all
2 the contents in that minute book. So it wasn't
3 just the minutes but that was part of it.

4 Q. It's your testimony that you did not
5 review the North Carolina Business Corporation Act
6 in connection with the preparation of your
7 opinion?

8 A. That's correct.

9 MR. JACOBVITZ: Could we mark this as
10 Exhibit 6.

11 (Deposition Exhibit No. 6 was marked for
12 identification and attached to the transcript.)

13 BY MR. JACOBVITZ:

14 Q. Sir, I show you what's been marked as
15 Exhibit 6 and I'm asking you if you could please
16 look at Section 55-8-01 of the North Carolina
17 Business Corporation Act and based on your
18 testimony, I presume you have never seen this
19 before?

20 A. I don't know if I have never seen it
21 before but I certainly haven't seen it in the
22 context of this case. I don't remember.

1 says they'll be held upon notice.

2 Q. What is a regular meeting of the
3 board?

4 A. My understanding of a regular meeting
5 is one that is regularly scheduled as opposed to
6 ones that may be called from time to time for some
7 particular purpose that's come up.

8 Q. When you say regularly scheduled, do
9 you mean monthly, quarterly or annually?

10 A. It could be, depending upon what the
11 corporate documents say it could be on any time
12 frame but it might be annual.

13 Q. In connection with the preparation of
14 your opinion, did you review any documents or
15 other information that would lead you to believe
16 that the meetings held as board meetings were
17 regular meetings within the meaning of the
18 statute?

19 A. Say the whole question again?

20 Q. In connection with the preparation of
21 your opinion, did you review any documents or
22 other information that would lead you to believe

1 that the meetings held as board meetings were
2 regular meetings within the meaning of the
3 statute?

4 A. I don't think so. You mean other than
5 the provision in the bylaws about regular
6 meetings? I think it says annual meetings. I
7 mean, that's the only document that I saw that
8 related to it.

9 Q. Could you please review section B of
10 this statute?

11 A. Sure. (The witness complies.) Okay.

12 Q. Are you aware of any special meetings
13 that were called by the board of directors?

14 A. I'm aware of the meetings that I
15 listed in my report. I'm not sure whether they
16 were categorized as special or regular. The only
17 meeting I'm aware of are the ones that are
18 reflected in their minutes.

19 Q. Do you know if those meetings were
20 noticed less than five days before the meeting by
21 any usual means of communication?

22 A. My understanding from the -- I can't

1 corporation, this is the way they did things and
2 there was no indication they objected among --
3 that one objected to the other two or two objected
4 to one and said we need to do things differently.

5 BY MR. JACOBVITZ:

6 Q. Well, did you read the E-mails in this
7 case that were produced in discovery?

8 A. I don't know if I have seen any
9 E-mails unless they were -- there might have been
10 a few E-mails that were attached in those
11 documents that are listed in the index but I don't
12 recall anything in particular right now.

13 Q. Are you aware that thousands of pages
14 have been exchanged in discovery in this case?

15 A. I don't know how much has been
16 exchanged.

17 Q. Are you aware that probably a thousand
18 E-mails have been exchanged in this case?

19 A. I don't know how many if any.

20 Q. When you say you're not aware of any
21 objections by any of the officers, you haven't
22 reviewed the E-mails in this case, have you?

1 A. That's correct.

2 Q. And you haven't been privy to any of
3 the phone conversations that took place in this
4 case; is that correct?

5 A. That's correct, too.

6 Q. So an officer could have been
7 objecting to how meetings were being held or not
8 being apprised of meetings and you would have no
9 idea about that, would you?

10 A. That is possible.

11 Q. Could you please look at section 4 of
12 the bylaws?

13 A. Which article?

14 Q. Article 1. What does the first
15 paragraph provide?

16 A. It relates to giving -- again this
17 relates to shareholders meetings and it relates to
18 giving written notice of the meetings.

19 Q. With respect to any meetings that you
20 may have been intended to be shareholder meetings
21 rather than board meetings, do you know if notice
22 of the meeting was properly provided to

1 Q. Are you familiar with the case law in
2 this area on holding corporate meetings?

3 A. Generally I haven't read any case law
4 recently and haven't attempted to.

5 Q. When was the last time you read any
6 case law in this area?

7 A. Some time over the last 30 years. I
8 just don't know.

9 Q. Are you familiar with the case Fogel
10 versus U.S. Energy Systems in the Court of
11 Chancery in the State of Delaware?

12 A. I don't know it off the top of my
13 head.

14 Q. Are you familiar with whether this
15 case law indicates that the mere fact that
16 directors are gathered together that is not a
17 meeting to make?

18 A. That seems generally right to me.

19 Q. Did you review Trident's annual
20 reports?

21 A. Yes.

22 Q. And it's your testimony they were not

1 Q. Based on your review of the North
2 Carolina statute now and Mr. Hillenburg's
3 residency in Virginia, does he appear to be
4 qualified to act as Trident's registered agent?

5 A. Well, he would not be qualified if his
6 residence is not in the state. I do not have
7 information that is obvious because you have asked
8 me this. I haven't looked at this statute. I
9 haven't done research on what the meaning of the
10 terms are but I believe he's a resident of
11 Arlington, Virginia.

12 Q. Now, if you can look at Exhibit 7
13 again. Does that -- does that section permit the
14 Secretary of State to dissolve a corporation
15 administratively if the corporation is without a
16 registered agent in the state for 60 days or more?

17 A. If it does can you point it out so
18 that I don't have to read the whole thing again?
19 I don't see that in the Exhibit 7 you gave me.

20 MR. JACOBVITZ: Can we mark this as
21 Exhibit 10.

22 (Deposition Exhibit No. 10 was marked for

1 identification and attached to the transcript.)

2 BY MR. JACOBVITZ:

3 Q. Sir, this is a document that's
4 entitled administrative dissolution section
5 55-14-20 of the North Carolina Business
6 Corporation Act. If you could look at section 3?

7 A. Yes.

8 Q. Please indicate what it says?

9 A. Yeah. What it says is that the
10 Secretary of State can commence a proceeding under
11 and it states the statute, to dissolve
12 administrator or corporation if and then 3 is the
13 corporation is without a registered agent or
14 registered office in the state for 60-days or
15 more.

16 Q. Based on your reading of that statute
17 and your knowledge of the facts in this case, can
18 the Secretary of State commence such a proceeding
19 against Trident? Yes or no?

20 A. The answer is yes. If Mr. Hillenburg,
21 who is the named registered agent is not of a
22 residence in North Carolina.